

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HORACE ABNEY,

Plaintiff,

-against-

JOHN MCGINNIS, MARIO MALVAROSA, PAUL
WILSON, ANN ARCKERT, MICHAEL DIPOMPO, and
JOHN and JANE DOE,

Defendants.

----- X

**PLAINTIFF'S RESPONSE
TO DOCS DEFENDANTS'
LOCAL RULE 56.1
STATEMENT**

01 Civ. 8444 (SAS) (FM)

Pursuant to Local Rule 56.1(c) of the Local Civil Rules of the United States District Court for the Southern and Eastern Districts of New York, plaintiff Horace Abney hereby sets forth his response to DOCS Defendants' Local Rule 56.1 Statement:

1. This paragraph does not state a "fact".
2. **Admit.**
3. **Admit.**
4. **Admit.**
5. **Admit.**
6. **Admit.**
7. **Admit.**
8. **Deny.** The deposition page cited by defendants does not support their statement of fact.
9. **Admit** that that was defendants' testimony.
10. **Admit.**
11. **Admit.**

12. **Admit.**

13. **Deny** to the extent there is an implication that plaintiff spoke with Nurse Supervisor Eckert only one time.

14. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

15. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

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17. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

18. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

19. **Admit.**

20. **Admit.**

21. **Admit.**

22. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

23. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

24. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

25. **Admit.**

26. **Admit/Deny.** Plaintiff complained about not receiving the footwear, but never refused to wear his original shoes because the State would not reimburse him for them. (Pl. Decl. ¶ 6.)

27. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

28. **Admit.**

29. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

30. **Admit.**

31. **Admit.**

32. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

33. **Deny.** Plaintiff did not tell DiPompo that the orthoses cracked while he was playing basketball, (Pl. Decl. ¶ 4), and the orthoses were never functional, (Pl. Tr. at 76-77).

34. **Admit** that DiPompo claimed that plaintiff was able to ambulate successfully.

35. **Admit.**

36. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

37. **Admit.**

38. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

39. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

40. **Admit** that DiPompo claimed that the items were satisfactory.

41. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

42. **Admit/Deny.** Plaintiff had his first official visit with Wilson on May 25, 2000, but had spoken with him numerous times informally. (Pl. Decl. ¶ 9.)

43. **Admit.**

44. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

45. **Admit.**

46. **Admit.**

47. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

48. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

49. **Admit.**

50. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

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54. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

55. **Admit.**

56. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

57. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

58. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

59. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

60. **Admit** that DiPompo claimed that the orthoses were satisfactory.

61. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

62. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

63. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

64. **Admit/Deny.** The entry also notes multiple complaints re his prostheses / special shoes. (emphasis in original) (Bates 234.)

65. **Admit** that the records so state.

66. **Admit.**

67. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

68. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

69. **Admit.**

70. **Admit.**

71. **Admit/Deny.** The boots were delivered, but plaintiff's complaints were never alleviated. (Pl. Decl. ¶¶ 7, 8; Pl. Tr. at 76-77.)

72. **Admit.**

73. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

74. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

75. **Deny.** The document cited by defendants states that plaintiff was awaiting an orthotics appointment, not that one was "pending."

76. **Admit** that that is Dr. Malvarosa's assertion.

77. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

78. **Admit.**

79. **Admit.**

80. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

81. **Admit.**

82. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

83. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

84. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

85. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

86. **Admit/Deny.** At the time of his deposition, plaintiff was still in DOCS custody and had no control over whether he received treatment for his serious foot condition.

87. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

88. This paragraph contains multiple statements of fact and is therefore not in compliance with the Court's individual rules.

Dated: New York, New York
December 15, 2006

Respectfully submitted,

/s
Rose M. Weber (RW 0515)
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